

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

RECEIVED

IN RE: *Generic Docket to Establish UNE* )  
*prices for Line Sharing per FCC 99-355 and* )  
*Riser Cable and Terminating Wire as* )  
*Ordered in Authority Docket No. 98-00123* )

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DOCKET NO. 00-00544

TN REGULATORY AUTHORITY  
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**COVAD COMMUNICATIONS COMPANY'S RESPONSE TO MOTION TO SUSPEND**

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Covad Communications Company ("COVAD") files the following response to the "Joint Motion to Suspend" filed by United Telephone-Southeast and Sprint Communications Company (jointly "Sprint") asking the Tennessee Regulatory Authority to "suspend" the First Initial Order issued in the above-captioned proceeding on April 3, 2002, in light of the decision of the United States Court of Appeals for the District of Columbia in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir., 2002). In that case, the Court vacated the FCC's line sharing requirements, the implementation of which is one of the purposes of this proceeding. In its Motion, Sprint requested that the TRA "establish a procedure for the parties to comment" on the impact of the Court's decision on this docket and to "suspend the pending requirement for Sprint to file additional or revised cost studies." Motion at 3.

Covad submits that the Authority should not – indeed, cannot – take any action with regard to Sprint's request at this time.

First, the TRA no longer has jurisdiction to amend the Initial Order because that order has been appealed by Sprint and by BellSouth and is now pending before both the Tennessee Court of Appeals and the United States District Court. It is well established under Tennessee law that

once a notice of appeal has been filed, the trial court loses the power to amend its order.<sup>1</sup> Sprint is, of course, free to ask the reviewing courts to delay action on those pending appeals until the legal status of the FCC's line sharing requirement has been clarified

Second, the Petition is now moot. In the Motion, which was filed in May, 2002, Sprint asked that, because of the uncertainty created by the Court of Appeals' decision, Sprint should be relieved of its obligation to prepare and file cost studies supporting rates for the line-sharing related services which the TRA had ordered Sprint to make available to competitors. On September 24, 2002, Sprint filed the requested cost studies at the TRA.

Third, the factual basis for Sprint's request no longer exists. Although the Court of Appeals initially vacated the FCC's line sharing rules, the Court later granted the FCC's request to stay the effective date of the Court's decision until January 2, 2003, to give the federal agency time to address the Court's concerns. A copy of that unpublished ruling is attached. Therefore, the FCC's line sharing requirements remain in effect, at least for the next few months. During that time, the FCC is expected to clarify whether, and under what conditions, line sharing must be made available under federal law.. At the conclusion of that process, it may well be appropriate for the TRA to seek comments from the parties about the impact of the Court's

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<sup>1</sup> See *Steele v. Wolfe Sales Co., Inc.*, 663 S.W.2d 799 (Tenn. App. 1983) and *State of Tennessee v. Sheryl L. Pendergrass*, 937 S.W.2d 834 (holding that the jurisdiction of the appellate court "attaches upon the filing of the notice of appeal and, therefore, the trial court loses jurisdiction," and that "once the trial court loses jurisdiction, it generally has no power to amend its judgment"). The TRA itself has been very careful regarding the handling of agency matters that are related to cases pending before the Court of Appeals. See Petition of Nextlink to Sanction BellSouth Advertising and Publishing Co., Docket 98-00646, Order issued November 2, 1998, at page 4, footnote 4, and see dissenting opinion of Director Kyle at page 8, declining to rule on an issue which was currently pending before the Court.

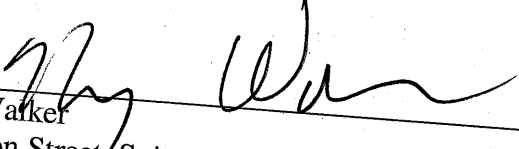
decision and the FCC's response. But it makes little sense to file comments before the FCC has acted.

For each and all of these reasons, the TRA should deny Sprint's Motion.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, and/or hand delivered to the following on this the 11<sup>th</sup> day of October, 2002

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
Suite 2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

Sylvia Anderson, Esq.  
AT&T  
1200 Peachtree St., NE  
Suite 8100  
Atlanta, GA 30309

James Wright, Esq.  
United Telephone Southeast  
14111 Capitol Blvd.  
Wake Forest, NC 27587

Charles B. Welch, Esq.  
Farris, Mathews, Branam & Hellen PLC  
205 Capitol Blvd., Suite 303  
Nashville, TN 37219

R. Dale Grimes, Esq.  
Bass, Berry & Sims, LC  
2700 First American Center  
Nashville, TN 37238-2700

Dana Shaffer, Esq.  
XO Tennessee, Inc.  
105 Molloy St., Suite 300  
Nashville, TN 37201

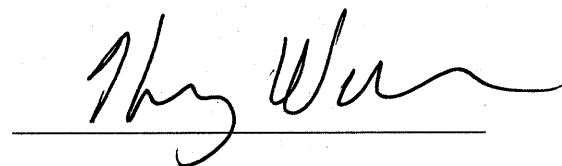
Susan Berlin, Esq.  
MCI Telecommunications d/b/a  
MCI WorldCom  
6 Concourse Parkway  
Atlanta, GA 30328

Bennett Ross, Esq.  
BellSouth Telecommunications, Inc.  
675 W. Peachtree St., Suite 4300  
Atlanta, GA 30375

John Spilman  
Director of Regulatory Affairs and  
Industry Relations  
BroadSlate Networks, Inc.  
675 Peter Jefferson Parkway, Suite 310  
Charlottesville, VA 22911

Joshua Bobeck, Esq.  
Swidler Berlin, et al.  
3000 K. St., NW #300  
Washington, DC 20007-5116

William H. Weber, Esq.  
Covad Communications Company  
1230 Peachtree St., NE  
19<sup>th</sup> Floor  
Atlanta, GA



**ATTACHMENT**

Only the Westlaw citation is currently available.

The Clerk is directed to issue a partial mandate in No. 00-1012, et al. and in No. 00-1015, et al. in the normal course.

United States Court of Appeals, District of Columbia  
Circuit.

2002 WL 31039663 (D.C.Cir.)

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UNITED STATES TELECOM ASSOCIATION,  
Petitioner

v.

FEDERAL COMMUNICATIONS COMMISSION  
and United States of America, Respondents  
BELL ATLANTIC TELEPHONE COMPANIES, et  
al., Intervenor

UNITED STATES TELECOM ASSOCIATION,  
Petitioner

v.

FEDERAL COMMUNICATIONS COMMISSION  
and United States of America, Respondents  
AT & T CORPORATION, et al., Intervenor

No. 00-1012.

Sept. 4, 2002.

Before: EDWARDS and RANDOLPH, Circuit  
Judges, and WILLIAMS, Senior Circuit Judge.

#### ORDER

PER CURIAM.

\*1 Upon consideration of intervenor WorldCom, Inc.'s, petition for rehearing or, in the alternative, for partial stay of the mandate, and the responses thereto, it is

ORDERED that the petition for rehearing be denied.  
It is

FURTHER ORDERED that the motion for partial stay of the mandate be granted. The vacatur of the Commission's orders is hereby stayed until January 2, 2003. *See In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, 16 F.C.C.R. 22781, 22818 at ¶ 81 (2001) (FCC is currently reviewing rules for triennial review that is to be completed in 2002).